

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 977 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BARODA SHAHER ANJUMAN ISLAM

Versus

COLLECTOR

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Appearance:

MR PB MAJMUDAR for Petitioners

MR DP JOSHI, AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 09/07/98

ORAL JUDGEMENT

Rule. In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. This petition under Article 226 of the Constitution challenges the order dated 1.1.1998 (Annexure "J") passed by the Collector, Baroda initiating suo motu revisional proceedings in respect of the order dated 31.10.1977 passed by the City Survey Inquiry Officer, Baroda in respect of properties bearing Revenue Survey No.201 and City Survey No. 2564 to 2568 of Baroda City.

The petitioners have also challenged the order dated 5.2.1998 (Annexure "K") passed by the Mamlatdar, Baroda City for taking over possession of the aforesaid properties.

3. While issuing notice on 13.2.1998, this Court had stayed the operation and implementation of the aforesaid order dated 5.2.1998 at Annexure "K" to the petition. It was also clarified that there was no stay of the proceedings of suo motu revision pending before the Collector and that it was open to the petitioners to raise all contentions available to them under the law in the said revisional proceedings. Today, the Court is informed that the Collector has not taken any further steps nor has the Collector proceeded with the hearing of the suo motu revision.

4. Mr Parikh, learned counsel appearing for the petitioners has submitted that the Collector had no power or jurisdiction to initiate suo motu proceedings after a period of 21 years and that on that ground alone, the notice for initiating the suo motu proceedings deserves to be quashed and set aside. It is further submitted that the Mamlatdar has proceeded on the footing as if the orders of the City Survey Inquiry Officer were already set aside and, therefore, the petitioners are even called upon to handover possession of the land in question.

5. Having heard the learned counsel for the parties, it appears to the Court that in the facts and circumstances of the case, the interests of justice would be served if the impugned order dated 5.2.1998 at Annexure "K" to the petition passed by the Mamlatdar, Baroda City is quashed and set aside as the question whether the order dated 31.10.1977 passed by the City Survey Officer in favour of the petitioners should be set aside or not is a question yet to be decided by the Collector.

6. As regards the contention of Mr Parikh that the suo motu proceedings cannot be initiated after a lapse of 21 years, since the matter is still pending before the Collector without expressing any opinion on merits it would be just and proper to require the petitioners to raise all available contentions before the Collector at the hearing of the suo motu revision. The Collector shall, therefore, give a reasonable and adequate opportunity of being heard to the petitioners and shall decide all the contentions which may be raised before him.

It will be open to the petitioners to raise all available contentions including the contention about the delay in initiation of suo motu proceedings. It will also be open to the petitioner to produce such material before the Collector as the petitioners may think fit.

7. Until the Collector takes appropriate decision in the aforesaid suo motu revision, the respondents shall not take any steps for recovering possession of the property in question from the petitioners nor shall the respondents demolish the construction in question. This relief is granted in view of a statement from the learned counsel for the petitioners under the instructions from the petitioners that the petitioners shall not sell, transfer, alienate or otherwise dispose of any interest in the property in question nor shall they part with the possession of the property in question in favour of any other party until the Collector takes a decision in the aforesaid revision application.

8. The petition is accordingly disposed of in terms of the aforesaid directions. The order dated 5.2.1998 (Annexure "K") passed by the Mamlatdar, Baroda City is quashed and set aside, as the suo motu revision is still pending before the Collector.

9. Rule is made absolute to the aforesaid extent only in terms of the directions given in this order.

Sd/-

July 9, 1998

(M.S. Shah, J.)